

Calendar No. 759

107TH CONGRESS
2^D SESSION

S. 2520

To amend title 18, United States Code, with respect to the sexual exploitation of children.

IN THE SENATE OF THE UNITED STATES

MAY 15 (legislative day, MAY 9), 2002

Mr. HATCH (for himself, Mr. LEAHY, Mr. SESSIONS, Mr. HUTCHINSON, Mr. BROWNBACK, Mr. EDWARDS, Mr. DEWINE, Mr. GRASSLEY, Mrs. LINCOLN, and Mr. BENNETT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

NOVEMBER 14, 2002

Reported by Mr. LEAHY, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend title 18, United States Code, with respect to the sexual exploitation of children.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Prosecutorial Remedies
5 and Tools Against the Exploitation of Children Today Act
6 of 2002”.

1 **SEC. 2. CERTAIN ACTIVITIES RELATING TO MATERIAL CON-**
2 **STITUTING OR CONTAINING CHILD PORNOG-**
3 **RAPHY.**

4 Section 2252A of title 18, United States Code, is
5 amended—

6 (1) in subsection (a)—

7 (A) by striking paragraph (3) and insert-
8 ing the following:

9 “(3) knowingly—

10 “(A) reproduces any child pornography for
11 distribution through the mails, or in interstate
12 or foreign commerce by any means, including
13 by computer; or

14 “(B) advertises, promotes, presents, de-
15 scribes, distributes, or solicits through the
16 mails, or in interstate or foreign commerce by
17 any means, including by computer, any material
18 in a manner that conveys the impression that
19 the material is, or contains, an obscene visual
20 depiction of a minor engaging in sexually ex-
21 plicit conduct;”;

22 (B) in paragraph (4), by striking “or” at
23 the end;

24 (C) in paragraph (5), by striking the pe-
25 riod at the end and inserting “; or”; and

26 (D) by adding at the end the following:

1 “(6) knowingly distributes, offers, sends, or
2 provides to a minor any visual depiction, including
3 any photograph, film, video, picture, or computer
4 generated image or picture, whether made or pro-
5 duced by electronic, mechanical, or other means, of
6 sexually explicit conduct where such visual depiction
7 is, or appears to be, of a minor engaging in sexually
8 explicit conduct—

9 “(A) that has been mailed, shipped, or
10 transported in interstate or foreign commerce
11 by any means, including by computer;

12 “(B) that was produced using materials
13 that have been mailed, shipped, or transported
14 in interstate or foreign commerce by any
15 means, including by computer; or

16 “(C) which distribution, offer, sending, or
17 provision is accomplished using the mails or by
18 transmitting or causing to be transmitted any
19 wire communication in interstate or foreign
20 commerce, including by computer,
21 for purposes of inducing or persuading such minor
22 to participate in any activity that is illegal.”;

23 (2) in subsection (b)(1), by striking “(1), (2),
24 (3), or (4)” and inserting “(1), (2), (3), (4), or (6)”;
25 and

1 ~~(3)~~ by striking subsection (c) and inserting the
2 following:

3 ~~“(c) It shall be an affirmative defense to a charge~~
4 ~~of violating paragraph (1), (2), (3), (4), or (5) of sub-~~
5 ~~section (a) that—~~

6 ~~“(1)(A) the alleged child pornography was pro-~~
7 ~~duced using an actual person or persons engaging in~~
8 ~~sexually explicit conduct; and~~

9 ~~“(B) each such person was an adult at the time~~
10 ~~the material was produced; or~~

11 ~~“(2) the alleged child pornography was not pro-~~
12 ~~duced using any actual minor or minors.~~

13 No affirmative defense shall be available in any prosecu-
14 tion that involves obscene child pornography or child por-
15 nography as described in section 2256(8)(D). A defendant
16 may not assert an affirmative defense to a charge of vio-
17 lating paragraph (1), (2), ~~(3)~~, (4), or (5) of subsection
18 (a) unless, within the time provided for filing pretrial mo-
19 tions or at such time prior to trial as the judge may direct,
20 but in no event later than 10 days before the commence-
21 ment of the trial, the defendant provides the court and
22 the United States with notice of the intent to assert such
23 defense and the substance of any expert or other special-
24 ized testimony or evidence upon which the defendant in-
25 tends to rely. If the defendant fails to comply with this

1 subsection, the court shall, absent a finding of extraor-
 2 dinary circumstances that prevented timely compliance,
 3 prohibit the defendant from asserting a defense to a
 4 charge of violating paragraph (1), (2), (3), (4), or (5) of
 5 subsection (a) or presenting any evidence for which the
 6 defendant has failed to provide proper and timely notice.”.

7 **SEC. 3. ADMISSIBILITY OF EVIDENCE.**

8 Section 2252A of title 18, United States Code, is
 9 amended by adding at the end the following:

10 “(e) **ADMISSIBILITY OF EVIDENCE.**—In any prosecu-
 11 tion under this chapter, the name, address, or other identi-
 12 fying information, other than the age or approximate age,
 13 of any minor who is depicted in any child pornography
 14 shall not be admissible and the jury shall be instructed,
 15 upon request of the United States, that it can draw no
 16 inference from the absence of such evidence in deciding
 17 whether the child pornography depicts an actual minor.”.

18 **SEC. 4. DEFINITIONS.**

19 Section 2256 of title 18, United States Code, is
 20 amended—

21 (1) in paragraph (1), by inserting before the
 22 semicolon the following: “and shall not be construed
 23 to require proof of the actual identity of the per-
 24 son”;

25 (2) in paragraph (8)—

1 (A) in subparagraph (B), by inserting “is
2 obscene and” before “is”;

3 (B) in subparagraph (C), by striking “or”
4 at the end; and

5 (C) by striking subparagraph (D) and in-
6 serting the following:

7 “(D) such visual depiction—

8 “(i) is of a minor, or an individual
9 who appears to be a minor, actually engag-
10 ing in bestiality, sadistic or masochistic
11 abuse, or sexual intercourse, including gen-
12 ital-genital, oral-genital, anal-genital, or
13 oral-anal, whether between persons of the
14 same or opposite sex; and

15 “(ii) lacks serious literary, artistic, po-
16 litical, or scientific value; or

17 “(E) the production of such visual depic-
18 tion involves the use of an identifiable minor
19 engaging in sexually explicit conduct; and”;

20 (3) in paragraph (9)(A)(ii)—

21 (A) by striking “(ii) who is” and inserting
22 the following:

23 “(ii)(I) who is”; and

24 (B) by striking “and” at the end and in-
25 serting the following: “or

1 “(H) who is virtually indistinguishable
2 from an actual minor; and”.

3 **SEC. 5. RECORDKEEPING REQUIREMENTS.**

4 Section 2257 of title 18, United States Code, is
5 amended—

6 (1) in subsection (d)(2), by striking “of this
7 section” and inserting “of this chapter or chapter
8 71,”;

9 (2) in subsection (h)(3), by inserting “, com-
10 puter generated image or picture,” after “video
11 tape”; and

12 (3) in subsection (i)—

13 (A) by striking “not more than 2 years”
14 and inserting “not more than 5 years”; and

15 (B) by striking “5 years” and inserting
16 “10 years”.

17 **SEC. 6. FEDERAL VICTIMS’ PROTECTIONS AND RIGHTS.**

18 Section 227(f)(1)(D) of the Victims of Child Abuse
19 Act of 1990 (42 U.S.C. 13032(f)(1)(D)) is amended to
20 read as follows:

21 “(D) where the report discloses a violation
22 of State criminal law to an appropriate official
23 of that State or subdivision of that State for
24 the purpose of enforcing such State law.”.

1 **SEC. 7. CONTENTS DISCLOSURE OF STORED COMMUNICA-**
2 **TIONS.**

3 Section 2702 of title 18, United States Code, is
4 amended—

5 (1) in subsection (b)—

6 (A) in paragraph (5), by striking “or” at
7 the end;

8 (B) in paragraph (6)—

9 (i) in subparagraph (A)(ii), by insert-
10 ing “or” at the end;

11 (ii) by striking subparagraph (B); and

12 (iii) by redesignating subparagraph
13 (C) as subparagraph (B);

14 (C) by redesignating paragraph (6) as
15 paragraph (7); and

16 (D) by inserting after paragraph (5) the
17 following:

18 “(6) to the National Center for Missing and
19 Exploited Children, in connection with a report sub-
20 mitted under section 227 of the Victims of Child
21 Abuse Act of 1990 (42 U.S.C. 13032); or”, and

22 (2) in subsection (c)—

23 (A) in paragraph (4), by striking “or” at
24 the end;

25 (B) by redesignating paragraph (5) as
26 paragraph (6); and

1 (C) by inserting after paragraph (4) the
2 following:

3 “(5) to the National Center for Missing and
4 Exploited Children, in connection with a report sub-
5 mitted under section 227 of the Victims of Child
6 Abuse Act of 1990 (42 U.S.C. 13032); or”.

7 **SEC. 8. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**
8 **NOGRAPHY FOR DISTRIBUTION IN THE**
9 **UNITED STATES.**

10 Section 2251 of title 18, United States Code, is
11 amended—

12 (1) by striking “subsection (d)” each place that
13 term appears and inserting “subsection (e)”;

14 (2) by redesignating subsections (e) and (d) as
15 subsections (d) and (e), respectively; and

16 (3) by inserting after subsection (b) the fol-
17 lowing:

18 “(e)(1) Any person who, in a circumstance described
19 in paragraph (2), employs, uses, persuades, induces, en-
20 tices, or coerces any minor to engage in, or who has a
21 minor assist any other person to engage in, any sexually
22 explicit conduct outside of the United States, its territories
23 or possessions, for the purpose of producing any visual de-
24 piction of such conduct, shall be punished as provided
25 under subsection (e).

1 “(2) The circumstance referred to in paragraph (1)
2 is that—

3 “(A) the person intends such visual depiction to
4 be transported to the United States, its territories or
5 possessions, by any means, including by computer or
6 mail; or

7 “(B) the person transports such visual depic-
8 tion to the United States, its territories or posses-
9 sions, by any means, including by computer or
10 mail.”.

11 **SEC. 9. CIVIL REMEDIES.**

12 Section 2252A of title 18, United States Code, as
13 amended by this Act, is amended by adding at the end
14 the following:

15 “(f) CIVIL REMEDIES.—

16 “(1) IN GENERAL.—Any person aggrieved by
17 reason of the conduct prohibited under subsection
18 (a) or (b) may commence a civil action for the relief
19 set forth in paragraph (2).

20 “(2) RELIEF.—In any action commenced in ac-
21 cordance with paragraph (1), the court may award
22 appropriate relief, including—

23 “(A) temporary, preliminary, or permanent
24 injunctive relief;

1 “(B) compensatory and punitive damages;
 2 and
 3 “(C) the costs of the civil action and rea-
 4 sonable fees for attorneys and expert wit-
 5 nesses.”.

6 **SEC. 10. ENHANCED PENALTIES FOR RECIDIVISTS.**

7 Sections 2251(d), 2252(b), and 2252A(b) of title 18,
 8 United States Code, are amended by inserting “chapter
 9 71,” before “chapter 109A,” each place it appears.

10 **SEC. 11. SENTENCING ENHANCEMENTS FOR INTERSTATE**
 11 **TRAVEL TO ENGAGE IN SEXUAL ACT WITH A**
 12 **JUVENILE.**

13 Pursuant to its authority under section 994(p) of title
 14 18, United States Code, and in accordance with this sec-
 15 tion, the United States Sentencing Commission shall re-
 16 view and, as appropriate, amend the Federal Sentencing
 17 Guidelines and policy statements to ensure that guideline
 18 penalties are adequate in cases that involve interstate
 19 travel with the intent to engage in a sexual act with a
 20 juvenile in violation of section 2423 of title 18, United
 21 States Code, to deter and punish such conduct.

22 **SEC. 12. MISCELLANEOUS PROVISIONS.**

23 (a) APPOINTMENT OF TRIAL ATTORNEYS.—Not later
 24 than 6 months after the date of enactment of this Act,
 25 the Attorney General shall appoint 25 additional trial at-

1 torneys to the Child Exploitation and Obscenity Section
2 of the Criminal Division of the Department of Justice or
3 to appropriate U.S. Attorney's Offices, and those trial at-
4 torneys shall have as their primary focus, the investigation
5 and prosecution of Federal child pornography laws.

6 (b) REPORT TO CONGRESSIONAL COMMITTEES.—

7 (1) IN GENERAL.—Not later than 9 months
8 after the date of enactment of this Act, and every
9 2 years thereafter, the Attorney General shall report
10 to the Chairpersons and Ranking Members of the
11 Committees on the Judiciary of the Senate and the
12 House of Representatives on the Federal enforce-
13 ment actions under chapter 110 of title 18, United
14 States Code.

15 (2) CONTENTS.—The report required under
16 paragraph (1) shall include—

17 (A) an evaluation of the prosecutions
18 brought under chapter 110 of title 18, United
19 States Code;

20 (B) an outcome-based measurement of per-
21 formance; and

22 (C) an analysis of the technology being
23 used by the child pornography industry.

24 (c) SENTENCING GUIDELINES.—Pursuant to its au-
25 thority under section 994(p) of title 18, United States

1 Code, and in accordance with this section, the United
2 States Sentencing Commission shall review and, as appro-
3 priate, amend the Federal Sentencing Guidelines and pol-
4 icy statements to ensure that the guidelines are adequate
5 to deter and punish conduct that involves a violation of
6 paragraph (3)(B) or (6) of section 2252A(a) of title 18,
7 United States Code, as created by this Act. With respect
8 to the guidelines for section 2252A(a)(3)(B), the Commis-
9 sion shall consider the relative culpability of promoting,
10 presenting, describing, or distributing material in violation
11 of that section as compared with solicitation of such mate-
12 rial.

13 **SEC. 13. SEVERABILITY.**

14 If any provision of this Act, an amendment made by
15 this Act, or the application of such provision or amend-
16 ment to any person or circumstance is held to be unconsti-
17 tutional, the remainder of this Act, the amendments made
18 by this Act, and the application of the provisions of such
19 to any person or circumstance shall not be affected
20 thereby.

21 **SECTION 1. SHORT TITLE.**

22 *This Act may be cited as the “Prosecutorial Remedies*
23 *and Tools Against the Exploitation of Children Today Act*
24 *of 2002” or “PROTECT Act”.*

1 **SEC. 2. FINDINGS.**

2 *Congress finds the following:*

3 (1) *Obscenity and child pornography are not en-*
4 *titled to protection under the First Amendment under*
5 *Miller v. California, 413 U.S. 15 (1973) (obscenity),*
6 *or New York v. Ferber, 458 U.S. 747 (1982) (child*
7 *pornography) and thus may be prohibited.*

8 (2) *The Government has a compelling state in-*
9 *terest in protecting children from those who sexually*
10 *exploit them, including both child molesters and child*
11 *pornographers. “The prevention of sexual exploitation*
12 *and abuse of children constitutes a government objec-*
13 *tive of surpassing importance,” New York v. Ferber,*
14 *458 U.S. 747, 757 (1982) (emphasis added), and this*
15 *interest extends to stamping out the vice of child por-*
16 *nography at all levels in the distribution chain.*
17 *Osborne v. Ohio, 495 U.S. 103, 110 (1990).*

18 (3) *The Government thus has a compelling inter-*
19 *est in ensuring that the criminal prohibitions against*
20 *child pornography remain enforceable and effective.*
21 *“[T]he most expeditious if not the only practical*
22 *method of law enforcement may be to dry up the mar-*
23 *ket for this material by imposing severe criminal pen-*
24 *alties on persons selling, advertising, or otherwise*
25 *promoting the product.” Ferber, 458 U.S. at 760.*

1 (4) *In 1982, when the Supreme Court decided*
2 *Ferber, the technology did not exist to: (A) create de-*
3 *pications of virtual children that are indistinguishable*
4 *from depictions of real children; (B) create depictions*
5 *of virtual children using compositions of real children*
6 *to create an unidentifiable child; or (C) disguise pic-*
7 *tures of real children being abused by making the*
8 *image look computer generated.*

9 (5) *Evidence submitted to the Congress, includ-*
10 *ing from the National Center for Missing and Ex-*
11 *ploited Children, demonstrates that technology al-*
12 *ready exists to disguise depictions of real children to*
13 *make them unidentifiable and to make depictions of*
14 *real children appear computer generated. The tech-*
15 *nology will soon exist, if it does not already, to make*
16 *depictions of virtual children look real.*

17 (6) *The vast majority of child pornography pros-*
18 *ecutions today involve images contained on computer*
19 *hard drives, computer disks, and/or related media.*

20 (7) *There is no substantial evidence that any of*
21 *the child pornography images being trafficked today*
22 *were made other than by the abuse of real children.*
23 *Nevertheless, technological advances since Ferber have*
24 *led many criminal defendants to suggest that the im-*
25 *ages of child pornography they possess are not those*

1 of real children, insisting that the government prove
2 beyond a reasonable doubt that the images are not
3 computer-generated. Such challenges will likely in-
4 crease after the *Ashcroft v. Free Speech Coalition* de-
5 cision.

6 (8) Child pornography circulating on the Inter-
7 net has, by definition, been digitally uploaded or
8 scanned into computers and has been transferred over
9 the Internet, often in different file formats, from traf-
10 ficker to trafficker. An image seized from a collector
11 of child pornography is rarely a first-generation
12 product, and the retransmission of images can alter
13 the image so as to make it difficult for even an expert
14 conclusively to opine that a particular image depicts
15 a real child. If the original image has been scanned
16 from a paper version into a digital format, this task
17 can be even harder since proper forensic delineation
18 may depend on the quality of the image scanned and
19 the tools used to scan it.

20 (9) The impact on the government's ability to
21 prosecute child pornography offenders is already evi-
22 dent. The Ninth Circuit has seen a significant adverse
23 effect on prosecutions since the 1999 Ninth Circuit
24 Court of Appeals decision in *Free Speech Coalition*.
25 After that decision, prosecutions generally have been

1 *brought in the Ninth Circuit only in the most clear-*
2 *cut cases in which the government can specifically*
3 *identify the child in the depiction or otherwise iden-*
4 *tify the origin of the image. This is a fraction of mer-*
5 *itorious child pornography cases. The National Center*
6 *for Missing and Exploited Children testified that, in*
7 *light of the Supreme Court's affirmation of the Ninth*
8 *Circuit decision, prosecutors in various parts of the*
9 *country have expressed concern about the continued*
10 *viability of previously indicted cases as well as de-*
11 *clined potentially meritorious prosecutions.*

12 *(10) In the absence of congressional action, this*
13 *problem will continue to grow increasingly worse. The*
14 *mere prospect that the technology exists to create com-*
15 *puter or computer-generated depictions that are indis-*
16 *tinguishable from depictions of real children will*
17 *allow defendants who possess images of real children*
18 *to escape prosecution, for it threatens to create a rea-*
19 *sonable doubt in every case of computer images even*
20 *when a real child was abused. This threatens to*
21 *render child pornography laws that protect real chil-*
22 *dren unenforceable.*

23 *(11) To avoid this grave threat to the Govern-*
24 *ment's unquestioned compelling interest in effective*
25 *enforcement of the child pornography laws that pro-*

1 *tect real children, a statute must be adopted that pro-*
 2 *hibits a narrowly-defined subcategory of images.*

3 *(12) The Supreme Court’s 1982 Ferber v. New*
 4 *York decision holding that child pornography was not*
 5 *protected drove child pornography off the shelves of*
 6 *adult bookstores. Congressional action is necessary to*
 7 *ensure that open and notorious trafficking in such*
 8 *materials does not reappear.*

9 **SEC. 3. CERTAIN ACTIVITIES RELATING TO MATERIAL CON-**
 10 **STITUTING OR CONTAINING CHILD PORNOG-**
 11 **RAPHY.**

12 *Section 2252A of title 18, United States Code, is*
 13 *amended—*

14 *(1) in subsection (a)—*

15 *(A) by striking paragraph (3) and inserting*
 16 *the following:*

17 *“(3) knowingly—*

18 *“(A) reproduces any child pornography for*
 19 *distribution through the mails, or in interstate*
 20 *or foreign commerce by any means, including by*
 21 *computer; or*

22 *“(B) advertises, promotes, presents, distrib-*
 23 *utes, or solicits through the mails, or in inter-*
 24 *state or foreign commerce by any means, includ-*
 25 *ing by computer, any material or purported ma-*

1 *terial in a manner that conveys the impression*
2 *that the material or purported material is, or*
3 *contains, an obscene visual depiction of a minor*
4 *engaging in sexually explicit conduct;”;*

5 *(B) in paragraph (4), by striking “or” at*
6 *the end;*

7 *(C) in paragraph (5), by striking the period*
8 *at the end and inserting “; or”; and*

9 *(D) by adding at the end the following:*

10 *“(6) knowingly distributes, offers, sends, or pro-*
11 *vides to a minor any visual depiction, including any*
12 *photograph, film, video, picture, or computer gen-*
13 *erated image or picture, whether made or produced by*
14 *electronic, mechanical, or other means, of sexually ex-*
15 *PLICIT conduct where such visual depiction is, or ap-*
16 *pears to be, of a minor engaging in sexually explicit*
17 *conduct—*

18 *“(A) that has been mailed, shipped, or*
19 *transported in interstate or foreign commerce by*
20 *any means, including by computer;*

21 *“(B) that was produced using materials*
22 *that have been mailed, shipped, or transported in*
23 *interstate or foreign commerce by any means, in-*
24 *cluding by computer; or*

1 “(C) which distribution, offer, sending, or
2 provision is accomplished using the mails or by
3 transmitting or causing to be transmitted any
4 wire communication in interstate or foreign
5 commerce, including by computer,
6 for purposes of inducing or persuading a minor to
7 participate in any activity that is illegal.”;

8 (2) in subsection (b)(1), by striking “(1), (2),
9 (3), or (4)” and inserting “(1), (2), (3), (4), or (6)”;
10 and

11 (3) by striking subsection (c) and inserting the
12 following:

13 “(c) It shall be an affirmative defense to a charge of
14 violating paragraph (1), (2), (3), (4), or (5) of subsection
15 (a) that—

16 “(1)(A) the alleged child pornography was pro-
17 duced using an actual person or persons engaging in
18 sexually explicit conduct; and

19 “(B) each such person was an adult at the time
20 the material was produced; or

21 “(2) the alleged child pornography was not pro-
22 duced using any actual minor or minors.

23 No affirmative defense shall be available in any prosecution
24 that involves obscene child pornography or child pornog-
25 raphy as described in section 2256(8)(D). A defendant may

1 *not assert an affirmative defense to a charge of violating*
2 *paragraph (1), (2), (3), (4), or (5) of subsection (a) unless,*
3 *within the time provided for filing pretrial motions or at*
4 *such time prior to trial as the judge may direct, but in*
5 *no event later than 10 days before the commencement of*
6 *the trial, the defendant provides the court and the United*
7 *States with notice of the intent to assert such defense and*
8 *the substance of any expert or other specialized testimony*
9 *or evidence upon which the defendant intends to rely. If*
10 *the defendant fails to comply with this subsection, the court*
11 *shall, absent a finding of extraordinary circumstances that*
12 *prevented timely compliance, prohibit the defendant from*
13 *asserting such defense to a charge of violating paragraph*
14 *(1), (2), (3), (4), or (5) of subsection (a) or presenting any*
15 *evidence for which the defendant has failed to provide prop-*
16 *er and timely notice.”.*

17 **SEC. 4. ADMISSIBILITY OF EVIDENCE.**

18 *Section 2252A of title 18, United States Code, is*
19 *amended by adding at the end the following:*

20 *“(e) ADMISSIBILITY OF EVIDENCE.—On motion of the*
21 *government, in any prosecution under this chapter, except*
22 *for good cause shown, the name, address, social security*
23 *number, or other nonphysical identifying information,*
24 *other than the age or approximate age, of any minor who*
25 *is depicted in any child pornography shall not be admis-*

1 sible and may be redacted from any otherwise admissible
 2 evidence, and the jury shall be instructed, upon request of
 3 the United States, that it can draw no inference from the
 4 absence of such evidence in deciding whether the child por-
 5 nography depicts an actual minor .”.

6 **SEC. 5. DEFINITIONS.**

7 Section 2256 of title 18, United States Code, is amend-
 8 ed—

9 (1) in paragraph (1), by inserting before the
 10 semicolon the following: “and shall not be construed
 11 to require proof of the actual identity of the person”;

12 (2) in paragraph (8)—

13 (A) in subparagraph (B), by inserting “is
 14 obscene and” before “is”;

15 (B) in subparagraph (C), by striking “or”
 16 at the end; and

17 (C) by striking subparagraph (D) and in-
 18 serting the following:

19 “(D) such visual depiction—

20 “(i) is, or appears to be, of a minor ac-
 21 tually engaging in bestiality, sadistic or
 22 masochistic abuse, or sexual intercourse, in-
 23 cluding genital-genital, oral-genital, anal-
 24 genital, or oral-anal, whether between per-
 25 sons of the same or opposite sex; and

1 “(i) lacks serious literary, artistic, po-
2 litical, or scientific value; or

3 “(E) the production of such visual depiction
4 involves the use of an identifiable minor engag-
5 ing in sexually explicit conduct;” and

6 (3) by striking paragraph (9), and inserting the
7 following:

8 “(9) ‘identifiable minor’—

9 “(A)(i) means a person—

10 “(I)(aa) who was a minor at the time
11 the visual depiction was created, adapted,
12 or modified; or

13 “(bb) whose image as a minor was
14 used in creating, adapting, or modifying
15 the visual depiction; and

16 “(II) who is recognizable as an actual
17 person by the person’s face, likeness, or
18 other distinguishing characteristic, such as
19 a unique birthmark or other recognizable
20 feature; and

21 “(i) shall not be construed to require proof
22 of the actual identity of the identifiable minor;
23 or

1 “(B) means a computer or computer gen-
2 erated image that is virtually indistinguishable
3 from an actual minor; and

4 “(10) ‘virtually indistinguishable’ means that
5 the depiction is such that an ordinary person viewing
6 the depiction would conclude that the depiction is of
7 an actual minor.”.

8 **SEC. 6. RECORDKEEPING REQUIREMENTS.**

9 Section 2257 of title 18, United States Code, is amend-
10 ed—

11 (1) in subsection (d)(2), by striking “of this sec-
12 tion” and inserting “of this chapter or chapter 71,”;

13 (2) in subsection (h)(3), by inserting “, computer
14 generated image or picture,” after “video tape”; and

15 (3) in subsection (i)—

16 (A) by striking “not more than 2 years”
17 and inserting “not more than 5 years”; and

18 (B) by striking “5 years” and inserting “10
19 years”.

20 **SEC. 7. SERVICE PROVIDER REPORTING OF CHILD PORNOG-**
21 **RAPHY AND RELATED INFORMATION.**

22 Section 227 of the Victims of Child Abuse Act of 1990
23 (42 U.S.C. 13032) is amended—

24 (1) in subsection (c), by inserting “or pursuant
25 to” after “to comply with”;

1 (2) *by amending subsection (f)(1)(D) to read as*
 2 *follows:*

3 “(D) *where the report discloses a violation*
 4 *of State criminal law, to an appropriate official*
 5 *of a State or subdivision of a State for the pur-*
 6 *pose of enforcing such State law.”;*

7 (3) *by redesignating paragraph (3) of subsection*
 8 *(b) as paragraph (4); and*

9 (4) *by inserting after paragraph (2) of sub-*
 10 *section (b) the following new paragraph:*

11 “(3) *In addition to forwarding such reports to*
 12 *those agencies designated in subsection (b)(2), the Na-*
 13 *tional Center for Missing and Exploited Children is*
 14 *authorized to forward any such report to an appro-*
 15 *priate official of a state or subdivision of a state for*
 16 *the purpose of enforcing state criminal law.”.*

17 **SEC. 8. CONTENTS DISCLOSURE OF STORED COMMUNICA-**
 18 **TIONS.**

19 *Section 2702 of title 18, United States Code, is amend-*
 20 *ed—*

21 (1) *in subsection (b)—*

22 (A) *in paragraph (5), by striking “or” at*
 23 *the end;*

24 (B) *in paragraph (6)—*

1 (i) in subparagraph (A)(ii), by insert-
2 ing “or” at the end;

3 (ii) by striking subparagraph (B); and

4 (iii) by redesignating subparagraph
5 (C) as subparagraph (B);

6 (C) by redesignating paragraph (6) as
7 paragraph (7); and

8 (D) by inserting after paragraph (5) the fol-
9 lowing:

10 “(6) to the National Center for Missing and Ex-
11 ploited Children, in connection with a report sub-
12 mitted under section 227 of the Victims of Child
13 Abuse Act of 1990 (42 U.S.C. 13032); or”; and

14 (2) in subsection (c)—

15 (A) in paragraph (4), by striking “or” at
16 the end;

17 (B) by redesignating paragraph (5) as
18 paragraph (6); and

19 (C) by inserting after paragraph (4) the fol-
20 lowing:

21 “(5) to the National Center for Missing and Ex-
22 ploited Children, in connection with a report sub-
23 mitted under section 227 of the Victims of Child
24 Abuse Act of 1990 (42 U.S.C. 13032); or”.

1 **SEC. 9. EXTRATERRITORIAL PRODUCTION OF CHILD POR-**
2 **NOGRAPHY FOR DISTRIBUTION IN THE**
3 **UNITED STATES.**

4 *Section 2251 of title 18, United States Code, is amend-*
5 *ed—*

6 *(1) by striking “subsection (d)” each place that*
7 *term appears and inserting “subsection (e)”;*

8 *(2) by redesignating subsections (c) and (d) as*
9 *subsections (d) and (e), respectively; and*

10 *(3) by inserting after subsection (b) the fol-*
11 *lowing:*

12 *“(c)(1) Any person who, in a circumstance described*
13 *in paragraph (2), employs, uses, persuades, induces, entices,*
14 *or coerces any minor to engage in, or who has a minor*
15 *assist any other person to engage in, any sexually explicit*
16 *conduct outside of the United States, its territories or pos-*
17 *sessions, for the purpose of producing any visual depiction*
18 *of such conduct, shall be punished as provided under sub-*
19 *section (e).*

20 *“(2) The circumstance referred to in paragraph (1) is*
21 *that—*

22 *“(A) the person intends such visual depiction to*
23 *be transported to the United States, its territories or*
24 *possessions, by any means, including by computer or*
25 *mail; or*

1 “(B) the person transports such visual depiction
2 to the United States, its territories or possessions, by
3 any means, including by computer or mail.”.

4 **SEC. 10. CIVIL REMEDIES.**

5 Section 2252A of title 18, United States Code, as
6 amended by this Act, is amended by adding at the end the
7 following:

8 “(f) CIVIL REMEDIES.—

9 “(1) IN GENERAL.—Any person aggrieved by
10 reason of the conduct prohibited under subsection (a)
11 or (b) may commence a civil action for the relief set
12 forth in paragraph (2).

13 “(2) RELIEF.—In any action commenced in ac-
14 cordance with paragraph (1), the court may award
15 appropriate relief, including—

16 “(A) temporary, preliminary, or permanent
17 injunctive relief;

18 “(B) compensatory and punitive damages;
19 and

20 “(C) the costs of the civil action and reason-
21 able fees for attorneys and expert witnesses.”.

22 **SEC. 11. ENHANCED PENALTIES FOR RECIDIVISTS.**

23 Sections 2251(d), 2252(b), and 2252A(b) of title 18,
24 United States Code, are amended by inserting “chapter 71,”
25 before “chapter 109A,” each place it appears.

1 **SEC. 12. SENTENCING ENHANCEMENTS FOR INTERSTATE**
2 **TRAVEL TO ENGAGE IN SEXUAL ACT WITH A**
3 **JUVENILE.**

4 *Pursuant to its authority under section 994(p) of title*
5 *18, United States Code, and in accordance with this section,*
6 *the United States Sentencing Commission shall review and,*
7 *as appropriate, amend the Federal Sentencing Guidelines*
8 *and policy statements to ensure that guideline penalties are*
9 *adequate in cases that involve interstate travel with the in-*
10 *tent to engage in a sexual act with a juvenile in violation*
11 *of section 2423 of title 18, United States Code, to deter and*
12 *punish such conduct.*

13 **SEC. 13. MISCELLANEOUS PROVISIONS.**

14 *(a) APPOINTMENT OF TRIAL ATTORNEYS.—*

15 *(1) IN GENERAL.—Not later than 6 months after*
16 *the date of enactment of this Act, the Attorney Gen-*
17 *eral shall appoint 25 additional trial attorneys to the*
18 *Child Exploitation and Obscenity Section of the*
19 *Criminal Division of the Department of Justice or to*
20 *appropriate U.S. Attorney's Offices, and those trial*
21 *attorneys shall have as their primary focus, the inves-*
22 *tigation and prosecution of Federal child pornog-*
23 *raphy laws.*

24 *(2) AUTHORIZATION OF APPROPRIATIONS.—*

25 *There are authorized to be appropriated to the De-*

1 *partment of Justice such sums as may be necessary*
2 *to carry out this subsection.*

3 *(b) REPORT TO CONGRESSIONAL COMMITTEES.—*

4 *(1) IN GENERAL.—Not later than 9 months after*
5 *the date of enactment of this Act, and every 2 years*
6 *thereafter, the Attorney General shall report to the*
7 *Chairpersons and Ranking Members of the Commit-*
8 *tees on the Judiciary of the Senate and the House of*
9 *Representatives on the Federal enforcement actions*
10 *under chapter 110 of title 18, United States Code.*

11 *(2) CONTENTS.—The report required under*
12 *paragraph (1) shall include—*

13 *(A) an evaluation of the prosecutions*
14 *brought under chapter 110 of title 18, United*
15 *States Code;*

16 *(B) an outcome-based measurement of per-*
17 *formance; and*

18 *(C) an analysis of the technology being used*
19 *by the child pornography industry.*

20 *(c) SENTENCING GUIDELINES.—Pursuant to its au-*
21 *thority under section 994(p) of title 18, United States Code,*
22 *and in accordance with this section, the United States Sen-*
23 *tencing Commission shall review and, as appropriate,*
24 *amend the Federal Sentencing Guidelines and policy state-*
25 *ments to ensure that the guidelines are adequate to deter*

1 *and punish conduct that involves a violation of paragraph*
2 *(3)(B) or (6) of section 2252A(a) of title 18, United States*
3 *Code, as created by this Act. With respect to the guidelines*
4 *for section 2252A(a)(3)(B), the Commission shall consider*
5 *the relative culpability of promoting, presenting, describing,*
6 *or distributing material in violation of that section as com-*
7 *pared with solicitation of such material.*

8 **SEC. 14. SEVERABILITY.**

9 *If any provision of this Act, an amendment made by*
10 *this Act, or the application of such provision or amendment*
11 *to any person or circumstance is held to be unconstitu-*
12 *tional, the remainder of this Act, the amendments made by*
13 *this Act, and the application of the provisions of such to*
14 *any person or circumstance shall not be affected thereby.*

Calendar No. 759

107TH CONGRESS
2^D SESSION

S. 2520

A BILL

To amend title 18, United States Code, with
respect to the sexual exploitation of children.

NOVEMBER 14, 2002

Reported with an amendment